

REMARKS

Receipt of the Final Rejection mailed June 7, 2010 is hereby acknowledged.

Reconsideration and withdrawal of the rejections in view of the foregoing amendments and the following remarks is respectfully requested. The Examiner is thanked for the indication that the rejections under 35 U.S.C. § 112 and under 35 U.S.C. § 103(a) over Hirsh in view of Merck and Wikipedia and over Echols in view of Merck and Wikipedia have been withdrawn

Amendments

Claim 1 has been amended to recite that the concentrate consists of one ω -3 fatty acid and polysorbates and that the claimed concentrate is clear. This amendment is supported, inter alia, in the specification at page 2, last full paragraph.

No new matter has been added.

Prior Art Rejections

Claims 1, 25-28, and 35 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Conklin, U.S. Patent No. 6,444,253 ("Conklin") in view of Bailey's Industrial Oil and Fat Products, 5th Edition, Vol. 1, (John Wiley & Sons, Inc., New York), pp. 162-164, 444-445, and 484-485 (Bailey's"). Applicant respectfully traverses.

The presently claimed invention is directed to a concentrate consisting of an ω -3 fatty acid and a surplus amount of polysorbates, wherein the ratio of ω -3 fatty acid to polysorbate is no greater than 3:7 by weight, and wherein the ω -3 fatty acids are micelled such that the

individual micelles have a size not greater than about 40 nm, and wherein the concentrate is clear.

Conklin describes an anhydrous flavor delivery system combining 10-40 % of a flavoring composition, 20-50 % of a surfactant system, 20-50 % of an alcoholic composition and up to 10% of other additive(s) (column 2, line 64 to column 3, line 8). By contrast, the presently claimed invention recites a concentrate consisting of an ω -3 fatty acid and a surplus amount of a polysorbate, wherein the ratio of ω -3 fatty acid to polysorbate is no greater than 3:7 by weight.

Thus, Conklin's system has a minimum of three components: (1) a flavoring composition; (2) a surfactant system, and (3) an alcoholic composition (a fourth component is optionally present). The presently claim composition consists of two components: an ω -3 fatty acid and a polysorbate. Nothing in Conklin teaches or suggests the use of a two-component system.

Starting from the disclosure of Conklin, in order to arrive at the presently claimed invention, a person skilled in the art would first have to use an ω -3 fatty acid as the flavoring component recited by Conklin with an omega-3 fatty acid. Second, the alcoholic composition required by Conklin would have to be omitted. Finally, Conklin's surfactant content would have to be increased, as Conklin requires that the maximum amount of polysorbate is 50% (col. 7, lines 46-47), and therefore Conklin's composition cannot contain "a surplus" of polysorbates.

Nothing in Conklin teaches or suggests making any of these changes. In fact, Conklin teaches that the addition of the alcoholic composition is essential for the system. As disclosed at column 3, lines 15-21, the anhydrous flavor delivery system is a microemulsion having an alcoholic continuous, outer phase and an inner phase constituted by the flavoring composition. In addition, Conklin stresses the importance of choosing suitable alcohols, as only alcohols with

at least two hydroxygroups per molecule can be successfully used in producing the anhydrous flavor delivery system (col. 3 , lines 50-54).

In addition, Conklin also notes that it is only after adding the alcoholic composition to the mixture of a surfactant (polysorbates) and flavoring composition does its formulation become clear (col. 10, lines 38-41). This is unlike the presently claimed invention, which contains only two components and is clear. This demonstrates that the presently claimed invention is very different from Conklin's composition. And, as noted above, Conklin provides no guidance, teaching, or suggestion to make the presently claimed, clear, two-component composition.

In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the obviousness rejection.

Conclusion

Applicant respectfully submits that the application is condition for allowance, and prompt notice to that effect is earnestly solicited. Should any questions arise, the Examiner is invited to call the undersigned representative.

Respectfully submitted,

JACOBSON HOLMAN PLLC

By: _____

N. Whitney Wilson
Registration No. 38,661

Date: December 7, 2010

Customer No. 00,136
400 Seventh Street, N.W.
Washington, D.C. 20004
(202) 638-6666